

**(COMMENTS WRITTEN IN BOLD CAPITAL LETTERS ARE THERE TO GUIDE YOU IN CREATING YOUR OWN MARITAL SETTLEMENT AGREEMENT. THEY INDICATE EITHER AN INSTRUCTION OR A CHOICE IN LANGUAGE. REMEMBER TO NUMBER EACH PAGE CONSECUTIVELY)**

**Use the parts below that apply to you. Change wording to meet your needs; disregard what does not fit, but do not leave out paragraphs 13 to 20. Use clear and specific wording because vague terms with more than one possible meaning cannot be enforced. Your marital settlement agreement will become the terms of your judgment, so make sure it is right.**

## MARITAL SETTLEMENT AGREEMENT

This Marital Settlement Agreement is hereby entered into between \_\_\_\_\_, hereinafter referred to as "Husband," and \_\_\_\_\_, hereinafter referred to as "Wife."

The parties were married on \_\_\_\_\_ . **(Date)**

Due to irreconcilable differences, Husband and Wife separated on \_\_\_\_\_, **(Date)** and are currently living apart from and have agreed to continue living separate and apart from each other. Husband and Wife desire to outline their mutual rights and duties arising as a result of the marital relationship. Husband and Wife therefore agree to the following:

### 1. Property (General)

Each party has independently determined to his or her satisfaction the extent of property owned by the parties jointly and individually. Each is satisfied that this agreement divides all property and assets that should be divided between the parties. Notwithstanding contrary provisions of law, any property, asset, or expectancy, be it real or personal, tangible or intangible, vested or contingent, that is not addressed in this agreement is the separate property of the party who now owns or possesses it. Henceforth, both parties shall have, own and enjoy, independently of any claim or right of the other, all personal property, including insurance policies and choses in action, which are now owned or held by or which may hereafter be acquired by either party, with full power to dispose of the same as fully and effectually, in all respects and for all purposes, as if he or she were unmarried.

### 2. Division of Personal Property

Husband and Wife have divided the property of the community to their mutual satisfaction as outlined below. Each party hereby waives any and all claim to any property in the possession or control of the other, except as listed below.

To Husband:

To Wife:

### 3. Division of Debts

Husband shall pay the following debts promptly when due, and indemnify and hold Wife harmless therefrom:

**NUMBER EACH PAGE CONSECUTIVELY**

Wife shall pay the following debts promptly when due, and indemnify and hold Husband harmless therefrom:

**(LIST ACCOUNTS AS FOLLOWS, NUMBERING EACH DEBT. GIVE NAME, ACCOUNT NUMBER, BALANCE, AND AMOUNT TO BE PAID, GENERALLY MONTHLY. IN THE EVENT THERE ARE NO DEBTS, OR THAT ONE PARTY WILL NOT BE PAYING ON THE DEBTS, WRITE NONE.)**

**[ALTERNATE FOR CASES WITH LITTLE OR NO SIGNIFICANT PROPERTY OR BILLS:]** Husband and Wife agree that their community property and debts are minimal, and that they have already divided it to their mutual satisfaction. Each hereby transfers and quitclaims to the other any and all interest in any property in the possession of the other, and agrees that whatever property they may possess is now the sole and separate property of the other.

Husband and Wife each promise the other that they shall not incur any debt or obligation for which the other may be liable, including medical and dental expenses, and each agrees that if any claim be brought seeking to hold one liable for the subsequent debts of the other, or for any act or omission of the other, then each will hold the other harmless, and defend such claim.

#### 4. Spousal Support

Spousal support will not be provided, and henceforth, both parties relinquish and waive any right or claim to spousal support from the other from the date of this agreement forth. This waiver specifically applies to any action and law concerning either party, more specifically any action in divorce, dissolution, or separation.

**OR**

Spousal support from Petitioner to Respondent, OR Respondent to Petitioner shall be provided in the amount of \$\_\_\_\_\_per month commencing on \_\_\_\_\_ until \_\_\_\_\_.

**[More options:** Such payment shall be paid by military allotment....There will be no spousal support at this time, but the court shall retain jurisdiction over spousal support...**Note:** you may adjust the amount at set times, for increases or decreases in spouse income, or for other events you specify.]

#### 5. Military Retirement Pay

The non-military spouse agrees to give up forever any right she/he may have to the military member's retirement benefits including pension and survivor benefit plan. She/he is aware that the retirement pension is a community asset.

**OR**

##### **a. "Typical" formulas for dividing retired pay:**

$\frac{1}{2}$  times (length of time the that marriage overlaps with military service divided by length of military service) times 100 = spouse's %

**b. Fractional or Percentage Share. This provision gives the former spouse the benefit of subsequent Cost of Living pay increases.**

The parties hereby agree that the nonmilitary spouse is awarded **[specify fraction, e.g., "1/2" or specify percentage, e.g., "50%"]** of the military member's disposable military retired pay as his/her separate property. [If the nonmilitary spouse qualifies for a direct payment from the appropriate finance center, the military member/retiree agrees to provide any necessary forms or other information necessary to accomplish this designation. The military finance center is hereby directed to initiate a direct payment from (husband's) (wife's) retired pay. The requirements of the Soldiers' and Sailors' Civil Relief Act as to the division of retired have been met.] **[To qualify for direct finance center payments, there must be at least 10 years of marriage which overlap with 10 years of service creditable toward retirement.]**

**c. Set Dollar Amount. This provision safeguards any subsequent Cost of Living pay increases for the retiree (unless the spouse has the order modified each time a raise is received).**

The parties hereby agree that the nonmilitary spouse is awarded (\$\_\_\_\_\_) of the military member's or retiree's disposable military retired pay as his/her separate property. [If the nonmilitary spouse qualifies for direct payment from the appropriate military finance center, the military member/retiree agrees to...**[See 5b above.]**

**d. Share Based on Rank At Time of Divorce. This clause denies the former spouse the benefit of increased pay for a member who is promoted after the divorce.**

The parties hereby agree that the nonmilitary spouse is awarded (specify fraction, e.g., "1/2" or percentage, e.g., "50%") of the military member's or retiree's disposable military pay as his/her separate property, based upon the military member/retiree's rank and pay level at the time this agreement is executed. [If the nonmilitary spouse qualifies for direct payment from the appropriate military finance center, the military member/retiree agrees to...**[See 5b above.]**

## 6. Survivor Benefit Plan Provisions

**Husband or Wife** agrees to name **husband or wife** as **sole** beneficiary of his/her Military Survivor Benefit Plan (SBP) or an annuity of equal or greater value for **husband or wife**.

**The following paragraph elects the spouse as the irrevocable beneficiary of the Survivor Benefit Plan benefits at the full base amount.**

The spouse is and shall be deemed as the irrevocable beneficiary of the Survivor Benefit Plan through the military member's retirement at the full base amount

## 7. Child Custody

**[This section concerns the health, care, and welfare of the children born of the marriage.]**

The following children were born of the marriage: \_\_\_\_\_ born on \_\_\_\_\_;  
\_\_\_\_\_; \_\_\_\_\_, born on \_\_\_\_\_;  
born on \_\_\_\_\_;

Both Father and Mother agree to the custody arrangements set out below for the children named above.

a. Legal Custody **[2 options]**

Father and Mother will be jointly entitled to legal custody of the children.

Father/Mother will have sole legal custody.

b. Physical Custody **[2 options]**

Father and Mother will have joint physical custody.

Father/Mother will have primary physical custody.

8. Visitation Rights

Father and Mother have agreed to the visitation rights set out below. **[Consider holidays, weekends, summer vacations, who pays for visitation, and removal of the child from the residence with these options:** Neither parent may remove, or cause to be removed, the minor children from California without 30 days prior written notice to the other parent. **[option:** This provision applies to vacations and trips outside California.] **Also:** Neither parent may change his or her residence or the residence of the minor children without 60 days prior written notice to the other parent.**[Consider:]** Notify upon receipt of reassignment orders.

9. Child Support

We, the Father and Mother each declare that: (A) We are fully aware of our rights and obligations concerning child support under California Family Code, sections 4053 to 4076. (B) We make this agreement freely without coercion or duress. (C) This agreement for support is in the best interest of our CHILD(REN). (D) Our CHILD(REN)'s needs will be adequately met by the agreed amount. (E) The right to support has not been assigned to any county, and no public assistance application is pending. (F) We understand that if we have stipulated to a child support award below the amount established under California Family Code, sections 4053 to 4076, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above. We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated:\_\_\_\_\_

SIGNATURE WIFE

Dated:\_\_\_\_\_

SIGNATURE HUSBAND

Support arrangements made between Father and Mother for the children of their marriage are as follows:

[Husband/Wife] shall pay to [Husband/Wife] a total of \$\_\_\_\_\_ per month, **[per child?]** payable on the \_\_\_\_\_ day of each month, beginning on the \_\_\_\_\_ day of

\_\_\_\_\_, 2001\_\_\_\_\_, and continuing until further order of this court or until said child marries, dies, becomes self-supporting, or reaches the age of 18, except that support shall continue until said child reaches 2001 or completes high school, whichever occurs first, so long as said child is in high school full-time and not self-supporting. This child support agreement was based upon Mother's gross income of \_\_\_\_\_, including Basic Allowance for Housing (BAH), if applicable; and Father's gross income of \_\_\_\_\_, including BAH, if applicable.  
**[Consider the military spouse's reduction or loss of BAH after divorce.]**

#### 10. Real Property

Neither Husband nor Wife currently has any interest in any real property. Both agree to waive any and all interest in any real property acquired by the other after the date of this agreement.

**OR**

Husband and Wife agree to divide real property as follows:

**WRITE IN YOUR OWN AGREED UPON TERMS. GIVE ASSESSOR'S PARCEL NUMBER AND LEGAL DESCRIPTION.**

Both agree to waive any and all interest in any real property acquired by the other after the date of this agreement.

#### 11. Life Insurance

Both husband and wife hereby agree to waive any and all rights concerning the designation of beneficiary on any insurance policy of the other.

**OR**

(Husband) (Wife) agrees to pay the premiums on and maintain insurance on his/her life payable to the children in the amount of \_\_\_\_\_. The designation of the children as beneficiary under the policy shall be irrevocable, and (Husband/Wife) agrees to execute the necessary documents to make such irrevocable designation. No party shall encumber or borrow against such policy without the prior written consent of the other.

#### 12. Tax Matters

Both Husband and Wife hereby acknowledge that they understand the benefit of filing under the status of being married and filing a joint tax return. Their agreement in handling tax matters is set out below:

**In the event that one party is releasing a Claim to Exemption for the Child(ren) of the Parties, IRS Form 8332 should be completed and signed. Such form is attached to the end of this sample Separation Agreement. This form is required if the parent with whom the child resides the majority of the year agrees to allow the parent with whom the child does not reside the majority of the year to claim the Child(ren) for income tax purposes. If such a release is to be signed, add the following:**

Parties agree to co-operate in the signing of IRS Form 8332, Claim to Exemption for Child of Divorced or Separated Parents for releasing the primary custodial parent's right to claim the exemptions on income tax returns.

### 13. Separation and No Interference

Husband and Wife shall hereafter be free to live separate apart from each other anywhere either party chooses. Neither party will interfere with the decision of the other party regarding his or her choice of abode, nor coerce or attempt to coerce the other to cohabit or have sexual relations with him or her.

### 14. Additional Instruments

Husband and wife shall from time to time, at the request of the other, execute, acknowledge and deliver to the other party, any and all instruments that be required to give full force and effect to the provisions of this agreement.

### 15. Entire Agreement and Binding Effect

This is the entire agreement between husband and wife. Any Amendment or change to this agreement must be in writing and must also be signed by both husband and wife. Except as otherwise stated herein, all provisions in this agreement shall be binding upon the respective heirs, next of kin, executors, and administrators of both husband and wife.

### 16. Partial Invalidity and Construction

In the event that any provision of the agreement is held to be invalid or unenforceable, all other provisions of this agreement shall nevertheless continue in full force and effect. This agreement shall be construed and governed by the laws of the State of California.

### 17. Addresses of the Parties

Both parties shall keep each other informed of the addresses and location of their residences and shall notify each other of any change thereof.

### 18. Mutual Release and Actions of Law

Subject to the provisions of this agreement, Husband and Wife mutually release each other from any and all claims and demands, in law or in equity, which either has against the other. If either party institutes an action in divorce or dissolution, or legal separation, both parties hereby stipulate to offer this agreement to the court for incorporation into any decree, interlocutory or final, of divorce, dissolution, or legal separation. Notwithstanding the language and terms of this section, this agreement is understood to have binding effect upon execution by both parties.

### 2001 Revocation and Disclosure

This agreement may only be revoked or modified by a subsequent written agreement and the replacement of this agreement by a similar written agreement or court order.

Both husband and wife warrant that they have made no promise, agreement, or understanding, except as set forth above, which was relied upon as an inducement to enter into this agreement.

20. Opportunity to Consult With Counsel

Both parties acknowledge their right to consult with counsel, of the availability of free legal counsel if they could not afford to obtain counsel, and of the desirability of consulting with counsel before executing this agreement because it affects important personal and financial rights. Each party has read and fully understands each and every provision of this agreement.

Signatures

IN WITNESS WHEREOF, Husband and Wife hereto affix their signatures, both thereby acknowledging the free and voluntary nature of the decision to enter into this agreement. These signatures also acknowledge that Husband and Wife were aware of their right to seek and be advised by an independent attorney in the preparation and review of this agreement.

\_\_\_\_\_  
Husband

\_\_\_\_\_  
Wife

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

STATE OF CALIFORNIA  
COUNTY OF MONTEREY

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of California, personally appeared before me, \_\_\_\_\_, husband, and also \_\_\_\_\_, wife, both known to me to be the parties whose names are subscribed to the foregoing separation agreement, and acknowledged to me that each voluntarily executed the same for the purpose therein contained.

Witness my hand and official seal on the day and year first written above.

My Commission Expires: \_\_\_\_\_  
Notary Public

**[This summarizes your judgment and provides a location after the marital settlement agreement to sign. The court Judgment Form 1287 instructs the judge to sign on the last attachment. Your separation agreement plus this continuation of judgment is eventually attached to the Judgment. Alter below to fit your case.]**

### CONTINUATION OF JUDGMENT

THE COURT FURTHER ORDERS THAT:

1. The court finds that the parties were married on \_\_\_\_\_, and separated on \_\_\_\_\_.
2. Neither party shall pay spousal support to the other, nor shall there be jurisdiction retained by the court for that purpose. The parties have freely waived all rights to spousal support.
3. It is ordered that Respondent shall pay child support in the amount set forth in the attached Marital Settlement Agreement dated \_\_\_\_\_.
4. It is further ordered that the community property of the parties is divided as set forth in the attached Marital Settlement Agreement dated \_\_\_\_\_.
5. The court retains jurisdiction to make such further orders as are appropriate to enforce or clarify the provisions of paragraph 4 in the event that there is a dispute that cannot be resolved between the parties in regard thereto.
6. The provisions of the Marital Settlement Agreement of the parties dated \_\_\_\_\_ is approved, attached hereto, and incorporated by reference, and each of the parties is ordered to comply with all of the terms and conditions stated therein.

DATED \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT